

**OPINION
78-107**

November 15, 1978 (OPINION)

Honorable Richard Backes
State Representative and Chairman
Committee on Legislative Procedure
and Arrangements
State Capitol
Bismarck, ND 58505

Dear Representative Backes:

This is in reply to your letter of November 13, 1978, in which you ask the following question:

Assuming that the Legislative Assembly wishes to convene its regular session on Wednesday, January 3, 1979, in accordance with Section 54-03-02 of the North Dakota Century Code, is there any potential conflict with Section 53 of the North Dakota Constitution?

We note that North Dakota Century Code Section 54-03-02 provides as follows:

54-03-02. WHEN LEGISLATIVE ASSEMBLY MEETS. The legislative assembly shall meet at the seat of government in the month of December following the election of the members thereof for organizational and orientation purposes and shall thereafter recess until twelve o'clock noon on the first Tuesday after the first Monday in January of the next year; provided, however, that if the first Tuesday after the first Monday falls on January second, the legislative assembly shall reconvene at twelve o'clock noon on the first Wednesday after the first Monday in January.

The legislative history of the section shows that it was amended and reenacted in its current form the S.L. 1973, Ch. 408 Section 1. Under the language of this section the regular session of the Forty-Sixth Legislative Assembly would commence at twelve o'clock noon on Wednesday, January 3, 1979.

Section 53 of the North Dakota Constitution provides:

Section 53. The legislative assembly shall meet at the seat of government in the month of December following the election of the members thereof for organizational and orientation purposes as provided by law and shall thereafter recess until twelve o'clock noon on the first Tuesday after the third day in January or at such other time as may be prescribed by law but not later than the eleventh day of January.

The legislative history of Section 53 shows that it was amended by S.L. 1975, Ch. 611, Section 1, approved by the electorate on September 7, 1976. Under this section, the Legislative Assembly would convene for its regular session at twelve o'clock noon on

January 9, 1979, or at such other time as the Legislative Assembly might provide by law, but in any event not later than January 11, 1978.

In light of the language in Section 53 of the North Dakota Constitution allowing the Legislative Assembly to convene "at such other time as may be prescribed by law", we do not believe there to be a meaningful conflict between the earlier enacted provisions of North Dakota Century Code section 54-03-02 and the later approved constitutional provision of Section 53. It is the law of this state that a constitutional enactment upon the same subject as a valid, existing statute does not by implication repeal the existing statute, unless the statute is repugnant, inconsistent, or in conflict with the constitutional provision. *State v. Garaas*, 261 N.W.2d. 914, 919 (N.D. 1978); *State ex rel Thomas John Agnes v. Schneider*, 253 N.W.2d. 184 (N.D. 1977). While it could be said that the statute and constitutional Section 53 are inconsistent to a degree by virtue of a date certain having been provided in each, it is considered that any such inconsistency is cured by the language in Section 53 which allows the Legislative Assembly to provide by law for another date.

In direct answer to your question, we see no conflict between Section 53 of the North Dakota Constitution, and North Dakota Century Code Section 54-03-02, which would in any way prevent the Legislative Assembly for its regular session at twelve o'clock noon on Wednesday, January 3, 1979.

Sincerely,

ALLEN I. OLSON

Attorney General